

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT L. McCRAY,

Petitioner,

-against-

SUPERINTENDENT OF THE GREEN
HAVEN CORRECTIONAL FACILITY,

Respondent.

1:20-CV-3994 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Petitioner, who appears *pro se*, is currently incarcerated in the Green Haven Correctional Facility. On May 21, 2020, the Court received the submission that commenced this action – a letter with attachments in which Petitioner requests an extension of time to file his petition for a writ of *habeas corpus*. (ECF 1.) He requests the extension because of the difficulties he has experienced in attempting to mail his petition from his prison. (*Id.*) By order dated June 5, 2020, the Court directed Petitioner, within 30 days, to either pay the \$5.00 filing fee to bring an action for *habeas corpus* relief in this Court or submit an application to proceed *in forma pauperis* (“IFP”). (ECF 2.) On June 29, 2020, the Court received Petitioner’s IFP application. (ECF 3.)

But on May 28, 2020, the Court received from Petitioner an actual petition for a writ of *habeas corpus* under 28 U.S.C. § 2254, in which Petitioner challenges his Bronx County conviction. That petition has commenced another action in this Court, *McCray v. Royce*, 1:20-CV-4127, in which Petitioner has been granted *in forma pauperis* status. That action is pending before District Judge Katherine Polk Failla of this Court, and has been referred to Magistrate Judge Katherine H. Parker.

In filing *McCray*, 1:20-CV-4127, it appears that Petitioner was eventually successful in filing the *habeas corpus* petition for which, in this action, he has requested an extension of time

to file. The Court therefore directs Petitioner to show cause, within 30 days, why the Court should not dismiss this action without prejudice to Petitioner's claims for *habeas corpus* relief in *McCray*, 1:20-CV-4127.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Petitioner and note service on the docket. The Court directs Petitioner to show cause, within 30 days, why the Court should not dismiss this action without prejudice to Petitioner's claims for *habeas corpus* relief in *McCray v. Royce*, 1:20-CV-4127. If Petitioner fails to show cause within the time allowed, the Court will dismiss this action without prejudice to Petitioner's claims for *habeas corpus* relief in *McCray*, 1:20-CV-4127.

Because the petition makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: July 17, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge